

Idaho UIC Program Revision Package  
Element Six:

UNDERGROUND INJECTION CONTROL PROGRAM  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF IDAHO  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**I. General**

This Memorandum of Understanding (MOU) establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 145, of the Safe Drinking Water Act (SDWA) for the State of Idaho (State) Underground Injection Control Program (UIC program) as authorized by Part C of the Safe Drinking Water Act, 42 U.S.C. § 300h, et. seq. as amended.

This MOU is entered into by the State and signed by the Director (Director) of the Idaho Department of Water Resources (IDWR) with the United States Environmental Protection Agency (EPA) and signed by the Regional Administrator (Regional Administrator). This MOU shall become effective when approved by the Regional Administrator.

**A. IDWR's Responsibilities**

The Idaho Department of Water Resources is authorized to administer the UIC Program. These responsibilities shall include, but not be limited to, administering the requirements of the SDWA that pertains to the UIC Program, submitting grant applications, and annual reporting requirements.

The State has authority over Class I through Class V injection wells. The UIC Program is implemented under Title 42, Chapter 39 of the Idaho Code.

**B. Review and Modifications**

The biennial program grant and the Environmental Performance Partnership MOU between EPA and IDWR shall be consistent with this MOU and may not override this MOU. This MOU may be modified upon the initiative of the State or the EPA. Modifications must be in writing and signed by the Director and the Regional Administrator. Modifications become effective when signed by the Regional Administrator. Modifications shall be by an addendum and attached to this MOU.

**C. Conformance with Laws and Regulations**

The State shall administer the UIC program consistent with the State's submission for program approval, this MOU, the SDWA, current Federal policies and regulations, promulgated minimum requirements, priorities established as part of the biennial approved State UIC grant, and any separate working MOUs which shall be entered into with the Regional Administrator as necessary for the full administration of the UIC program.

**D. Responsibilities of Parties**

Each of the parties has responsibility to assure that the UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between State and EPA staff in a partnership to assure successful and effective administration of the UIC program. In this partnership, the Regional Administrator will provide to the Director on a continuing basis technical and policy assistance on program matters. The Regional Administrator is responsible for keeping the Director apprised of the meaning and

content of Federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the UIC program. The strategies and priorities for program compliance issues and implementation of UIC regulation requirements shall be established in the State's program description, the biennial State/EPA Performance Partnership MOU, and/or in subsequent working MOUs. If requested by either party, meetings will be scheduled between the State and EPA to discuss mutual concerns involving the administration of the UIC program.

#### E. Sharing of Information

The Director shall inform EPA of any proposed, pending or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the UIC Program and the State's authority to administer the program. The Director shall promptly inform EPA of any resource allocation changes (for example, personnel or budget) which might affect the State's ability to administer the UIC program. Any information obtained or used by the State under its UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing EPA such information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2. If EPA obtains information from the State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

#### F. Duty to Revise Program

This MOU may be modified by either party to ensure consistency with the State program modifications or for any other purpose mutually agreed upon. Any revisions or modifications must be in writing and signed by the Director and the Regional Administrator.

#### G. Definition and Exemptions of USDW

The State agrees to define an "underground source of drinking water" (USDW) in a manner consistent with 40 CFR Part 144.3. The State rules shall be at least as protective of USDW as the federal regulations.

#### H. Duration of MOU

This MOU will remain in effect until such time as State UIC program approval is withdrawn by EPA, according to the provisions of 40 CFR Part 145.33.

#### I. General Provisions

Nothing in this MOU is intended to affect any State or local UIC program requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than: (1) any set forth in the federal UIC regulations; or (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this MOU shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other sections of the SDWA.

## II. Authorization by Rule

The State is responsible for authorizing Class V wells by rule, as a minimum standard, in a manner consistent with 40 CFR Part 144 but has the authority under Title 42, Chapter 3903 to issue a permit with operational conditions and an expiration date for those Class V wells the State deems necessary to regulate with more oversight.

### **III. Permitting**

#### **A. General**

Under Title 42, Chapter 39, the State is responsible for issuing and administering permits and shall do so in a manner consistent with 40 CFR Part 145.11. The Director shall review and issue permits based on the permit conditions under Title 42, Chapter 39 and IDAPA 37.03.03 in a manner consistent with 40 CFR Parts 144.51, 144.52, and 145.11. Permits shall be issued which comply with applicable Federal and State requirements.

#### **B. Compliance Schedules and Reports**

The Director agrees to include in the permits:

- Compliance schedules where appropriate and to require periodic reporting by permittee on compliance with such schedules and other permit conditions.
- Compliance monitoring, where appropriate, to ensure compliance with permit conditions and program requirements. For purposes of this MOU the terms "compliance monitoring" or "compliance evaluation" shall refer to all efforts associated with determining compliance with UIC program requirements.

#### **C. Compliance Reports**

The State shall maintain a system to determine if: (1) the reports required by permits and program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and program requirements are met. The reports and notices shall be evaluated for compliance status in accordance with the State compliance program and the program requirements.

#### **D. Information from the Public**

The Director shall maintain a mechanism to receive information from the public on violations, and to have procedures for receiving, investigating and ensuring proper consideration of the information.

#### **E. Authority to Enter**

To the extent permitted by law, the Director (and other State officials) engaged in compliance monitoring and evaluation has the authority to enter any site or premises subject to regulation, or to review and copy the records of relevant program operations where such records are kept.

#### **F. Admissibility**

Any investigatory inspections shall be conducted, and samples and other information shall be collected, in such a manner so as to provide evidence which would be admissible in any enforcement proceeding.

#### **G. Inspections**

The Director shall maintain an inspection procedure to determine compliance of applicable program requirements.

### **IV. Enforcement**

#### **A. General**

The State is responsible for taking timely and appropriate enforcement action against persons in violation of UIC program requirements, including compliance schedules, technical requirements, and permit conditions. Federal delegated and state statutory authority grants the Director the authority to inspect, monitor and enforce compliance with UIC program requirements. The Director may address designated violations of Idaho Code Title 42, Chapter 39 entitled "Injection Wells" under the provisions of Idaho Code 42-1701B entitled "Enforcement Procedure – Notice – Consent Order – Civil Action". This includes violations detected by either State or Federal inspections.

Failure by the State to initiate appropriate enforcement action against a substantive violation may be a basis for EPA's determination that the State has failed to take timely enforcement action.

EPA will respond to known violations in accordance to Safe Drinking Water Act (SDWA) section 1423.

#### B. Assessment of Fines

The State agrees to seek civil penalties consistent with 40 CFR Part 145.13 provided those amounts do not exceed amounts allowed under Idaho Code 42-1701B(6).

Nothing in this MOU shall affect EPA's authority or responsibility to take enforcement actions under Section 1423 of the SDWA.

#### C. Public Participation

The Director shall provide for public participation in the state enforcement process by providing assurance that the IDWR will investigate all citizen complaints and not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule or regulation.

#### D. EPA Enforcement

The EPA will not take enforcement actions under Section 1423 of the SDWA without providing prior notice to the State and otherwise complying with the requirements of that section.

#### E. Indian Lands

EPA is responsible for the regulation of UIC wells on Indian lands.

### V. EPA Oversight

#### A. General

EPA shall oversee the State's administration of the UIC program to assure that such administration is consistent with this MOU and the Environmental Performance Partnership Agreement. In addition to the specific oversight activities listed in this section, EPA may request and the State shall submit specific information and provide access to files necessary for evaluating the Director's administration of the UIC program.

#### B. Immediate Reporting on Noncompliance

The Director shall immediately notify the Regional Administrator of any substantial, imminent hazard to public health resulting from well injection that causes the endangerment of an underground source of drinking water.

#### C. Annual Performance Evaluation

At a minimum, EPA shall conduct biannual performance evaluations of the State Program using the State quarterly reports, annual non-compliance reports, program reports, and other requested information to determine State Program consistency with the program submission, SDWA and applicable regulations, and applicable guidance and policies. The review will not only include a review of financial expenditures, but reviews on progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

EPA shall submit a summary of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations. The report also may provide guidance for the development of upcoming grant applications. The State shall have 15 working days from the date of receipt to concur with or comment on the findings and recommendations.

## VI. Signatures

Idaho Department of Water Resources

U.S. Environmental Protection Agency

By \_\_\_\_\_  
Director

By \_\_\_\_\_  
Administrator, Region 10

Date \_\_\_\_\_

Date \_\_\_\_\_